


MEMORANDUM

To: The Honorable Brad Little, Lieutenant Governor of Idaho

From: Gary Spackman, Director 

Subject: Executive Order 2017-06, Evaluation of Licensure Requirements for Idaho Well Drillers and Operators

Date: June 8, 2018

The Idaho Department of Water Resources (“Department”) licenses well drillers and operators of water well drilling equipment pursuant to Idaho Code § 42-238 and the Well Driller Licensing Rules, IDAPA 37.03.10. The Department does not license any additional profession, occupation or vocation.

On May 19, 2017 Acting Governor Brad Little issued *Executive Order No. 2017-06 On Reviewing the Necessity for and the Applicability and Processing of Licensure Requirement for Individuals Engaged or Desiring to be Engaged or Employed in Technical, Professional Or Other Occupations within the State of Idaho, Emphasizing the Effect of Licensure Requirements on Idaho Employment Opportunities* (“EO”). The EO required the Department to:

- 1) Review statutes, regulations, and the licensing process;
- 2) Implement a process affording interested parties the opportunity to provide input on the Department’s driller licensing program; and
- 3) Prepare a report for the Governor’s office by July 1, 2018, detailing the following:
 - a) Turnaround time for license applications;
 - b) Licensing prerequisites;
 - c) Renewal requirements;
 - d) Number of applicants denied licensure;
 - e) Disciplinary actions;
 - f) Cost of administering the licensing program;
 - g) Law and rule changes within the past five years; and
 - h) Recommendations for improvement, modification or elimination of licensure requirements.

Statutes, Rules and Licensing Process Review (EO Item 1.)

Statutory responsibility to license well drillers and operators of water well drilling equipment is delegated to the Department pursuant to Idaho Code § 42-238, enacted in 1967 and last amended in 1998. Licensing of well drillers is a component of the Department's larger mission to protect Idaho's ground water resources against waste and contamination. The statute establishes licensing and renewal fees (table 1), and authorizes the promulgation of administrative rules to establish licensure qualifications (prerequisites) for drillers and operators. Licensing and renewal fees have not changed since 1998. Idaho Code § 42-238 authorizes the Department to revoke an active license or refuse to renew a license for failure to comply with statutes or administrative rules. Idaho Code § 42-1701B authorizes the Department to commence and pursue enforcement actions to remedy the designated violations of Title 42, Idaho Code.

The Department's Well Driller Licensing Rules, IDAPA 37.03.10, establish the requirements and procedures for obtaining and renewing authorization to drill wells in the State of Idaho. The qualifications and procedures include minimum qualifications for licensed Operators and Drillers, written examinations to test knowledge of drilling and well construction, company bonding, and continuing education. The Department's Well Construction Standards Rules, IDAPA 37.03.09, establish the minimum standards for the construction of wells. These minimum standards must be followed by all well drillers and operators when constructing a well. The Well Driller Licensing Rules and the Well Construction Standard Rules, together, establish a minimum set of regulations that protect Idaho's public health and ground water resources.

The Department works closely with the regulated driller community, including the Idaho Ground Water Association ("IGWA"). The IGWA, originally established in 1948, is a professional trade organization "developed to assist, promote, encourage and support the interests and welfare of the ground water industry within [Idaho]". *IGWA.info, 2018*. In 2011, IGWA, the drilling industry, Department, and other stakeholders participated in negotiated rule-making to revise the Idaho Well Driller Licensing Rules. During the negotiated rule making, IGWA and its members offered significant input regarding minimum acceptable requirements, pre-requisites, and continuing education necessary to obtain and renew a well driller license or operator permit in Idaho. The Department annually contracts with IGWA to administer the driller licensing continuing education program required by Idaho Code § 42-238 and the Well Driller Licensing Rules.

Timeframe for Approving or Denying Licensure Applications (EO item 1.a.)

On average, the Department issues a new license 16 days after submission of a complete application. The 16 day average applies to all license types (driller license, Class I and II operator permit, and company license). Most applications are received in one of the four Department regional offices and forwarded to the Boise state office. The time frame between receipt and issuance reflects the date the application is initially received at the region and finally processed at the state office.

Licensing Prerequisites (EO Item 1 b.)

Driller licensing in Idaho is a three-tiered program including:

Class I Operator Permit - An individual with little or no experience operating under the supervision of a licensed driller. A Class I Operator Permit requires completion and submittal of a Department application form signed by the applicant and licensed supervising driller or principal driller of the company proposing to employ the operator, along with a \$25 application fee.

Class II Operator Permit – An individual with some experience operating well drilling equipment under the supervision of a licensed well driller. A Class II Operator Permit requires completion and submittal of a Department application form signed by the applicant, along with a \$25 application fee. The application must show relevant experience and be verified by the supervising licensed driller. The applicant must pass a Department examination regarding well drilling, well construction and ground water related knowledge. An application fee is not required when the holder of a Class I Operator Permit applies for a Class II Operator Permit.

Licensed Driller - An individual with at least 24 months experience operating well drilling equipment and constructing water wells. A driller's license requires completion and submittal of a Department application form, along with a \$200 fee, evidence demonstrating sufficient experience constructing wells within the preceding 24 months, and three references to confirm the applicant's drilling experience. The application further requires the applicant to pass a Department examination regarding well drilling, well construction, and ground water related knowledge. If the applicant is a Class II Operator and has previously passed the Department examination, no additional examination is necessary.

Licensed Company – A firm, co-partnership, corporation or association licensed in accordance with the Well Driller Licensing Rules. A company license requires completion and submittal of a Department application form with the following information: three references regarding the company’s prior well drilling operations; a complete record of the compliance history of the company and the owners and employees of the company; the designation of a principal driller who shall be a fulltime employee of the company; the names and addresses of drillers and operators presently employed with the company; and a list of all drill rigs and other related drilling equipment owned or used by the company including the make and model of each piece of equipment.

Sixty-two (62) new applications for Driller and Operator licenses were received by the Department between May 1, 2017 and April 30, 2018 (see Table 1).

Table 1. Number of New Applications and Fees Received, May 1, 2017 to April 30, 2018			
Application Type	Count	Fee per Application Type	Total Fees
Company	5	\$0.00	\$0.00
Driller	18	\$200.00	\$3,600.00
Class II	10	\$25.00	\$250.00
Class I	29	\$25.00	\$725.00
Total	62		\$4,575.00

Licensing Renewal Requirements (EO Item 1.c.)

Licenses and Operator Permits are renewed on a biennial basis (every two years). The licensing period begins April 1 and ends March 31 of the second year following issuance. Each year, beginning in February, the Department sends renewal notices to all valid license holders that will expire in April of the current year. All companies are required to submit a renewal application identifying each individual that will be renewed, proof of continuing education credits for each licensed driller and class II operator a bond renewal certification and the appropriate fee for each individual. Renewal fees are \$100.00 per driller and \$15.00 per operator.

Table 2 below shows the number of licensure renewals issued and renewal fees received in 2018.

Table 2. Number of Licensure Renewals, May 1, 2017 to April 30, 2018			
Type of License Renewal	Count	Fee per Renewal Type	Total Fees
Driller	79	\$100.00	\$7,900.00
Class II	17	\$15.00	\$255.00
Class I	42	\$15.00	\$630.00
Company	47	\$0.00	\$0.00
Total	185		\$8,785.00

As shown in Table 2, the Department issued renewals to 47 drilling companies and 138 individual drillers and operators between May 1, 2017 and April 30, 2018. The average number of days from receiving a complete renewal application to issuing renewal of the company license, driller license, or operator permit is 6.5 days. Technical staff review renewal applications for bond and CEU requirements while data entry, filing, and correspondence are accomplished by one administrative staff member supporting several Department programs.

As of May 1, 2018, the Department had a total of 361 licenses and renewals on record for all well driller licensure types. This total includes 125 licensed companies, 218 licensed drillers, 98 Class I operators, and 45 Class II operators. The total number of licensures as of May 1, 2018 differs from the total number of licenses and renewals issued between May 1, 2017 and April 30, 2018 because licenses are renewed every two years pursuant to the Well Driller License Rules.

Licensure Application or Renewal Denials (EO Item 1.d.)

Idaho Code § 42-238 and IDAPA 37.03.10. 30 – 34 describe the qualifications and requirements for the types of well driller licensure in Idaho. For the period May 1, 2017 to April 30, 2018, one applicant was denied advancement from Class II Operator to Driller due to lack of experience pursuant to the Well Driller Licensing Rules. All other completed applications and renewals were approved.

The Department has been proactive in working with the IGWA to streamline the licensing application/renewal process and modify some licensing requirements. Revisions to the Well Driller Licensing Rules in 2011 included reducing the experience requirements from 30 months to 24 months to obtain a driller license. The Department also consolidated the examination process to a single exam to reduce excessive testing. Prior to 2011, two examinations were required, one for

the Class II Operator Permit and another for the Driller License. Since 2011, the same single exam is taken for the Class II Operator Permit and the Driller License. For example, an individual may qualify for and take the exam for a Class II operator; upon passing the single exam and obtaining the necessary experience to qualify for a Driller License, the Class II Operator need only apply for the license, demonstrate necessary experience, and submit the appropriate license fee (no additional exam is required for the Driller License).

Disciplinary Actions (EO item 1.e.)

Pursuant to Idaho Code § 42-1701B and Idaho Code § 42-238(13), the Department initiated three formal warnings and one notice of violation (NOV) between May 1, 2017 and April 30, 2018. Table 3 lists the disciplinary actions taken and the statutory and regulatory basis for the actions.

No fines were issued with the Warning letters or the Notice of Violation. The Notice of Violation required the driller to properly decommission the problem well at the driller’s expense.

Table 3. Disciplinary Actions			
Case No.	Violation	Statute/Regulation	Action
E2016-949	Failure to provide accurate locations for newly constructed wells	Idaho Code § 42-238(11) and IDAPA 37.03.09 Rule 25.03	Warning letter to Driller
E2017-1219	Excess sand production from completed well	IDAPA 37.03.09 Rule 25.24	NOV
	Failure to seal a well between separate aquifers	IDAPA 37.03.09 Rule 25.06(b)	
	Failure to submit accurate well driller’s report	Idaho Code § 42-238(11)	
E2018-1269	Failure to provide adequate supervision to Class I Operator	IDAPA 37.03.10 Rule 50.01(e)	Warning letter to Driller
	Drilling a well without a driller’s license	Idaho Code § 42-238(13)	Warning letter to Operator

Costs of Administering the Licensing Program (EO item 1.f)

Cost per applicant for a well driller license is about \$155 per applicant, (see Table 4.) The costs include staff time to prepare and present Rule training at continuing education workshops, travel time for workshops, proctoring and grading exams, license data entry, and filing. Cost per applicant is shown as the cost of the program divided by the applications received between May 2017 and May 2018.

Table 4. Cost per Applicant, May 1, 2017 to April 30, 2018				
Staff Hours	Dept. Cost	Total Fees Received	No. of Applications & Renewals*	Cost per applicant
665	\$31,223	\$13,360	200	\$156

*Does not include licensure or renewal of companies.

As shown in Table 4, the well driller licensure program’s costs are more than double the collected fees or revenue. Over the past year, costs exceed fees by about \$18,000. Additionally, the Department’s annual contract with IGWA includes a \$10,000 payment from the Department to IGWA to implement and manage the well driller’s continuing education workshops.

Applicants for a Driller license or a Class II Operator permit must pass an examination. Exams are proctored in each regional office on a quarterly basis, with additional exam days scheduled to accommodate drillers with extenuating circumstances. Each region spends on average 45 hours per quarter on licensing exams (160 hours total).

Changes to Statutes and Rules within the Past Five Years (EO item 1.g.)

There have been no changes to the Department’s driller licensing statutes or rules within the last five years. However, Well Driller Licensing Rules were revised in fiscal year 2011. As previously noted, the revised rules reduced, from 30 months to 24 months, the pre-requisite experience to become a licensed driller. The Department also consolidated the examination process to a single examination to reduce the regulatory burden of excessive testing.

Licensure of Idaho Well Drillers is in the Public Interest (EO item 2.a.)

Licensing of water well drillers in Idaho is important to the public interest of the State. Idaho relies on ground water for over 95% of its drinking water. *IGWA.info, 2018*. Ground water is vital for irrigation to support Idaho's large agricultural economy, as well as the commercial, municipal and industrial economic sectors of the State. The IGWA supports a continued well driller licensure program to promote public health and safety of Idaho's ground water drinking supply. *Letter from Lynn Tominaga, IGWA Executive Director, to Gary Spackman, IDWR Director, May 31, 2018* ("IGWA Letter"). This endorsement, plus the very limited feedback from the public outreach conducted to comply with the EO, indicates that the well drilling community strongly supports the need for driller licensure in Idaho.

Public Outreach to Interested Persons; and Recommendations for Improvement, Modification or Elimination of Licensure Requirements (EO items 2.b and 2.c.)

The Department mailed notice of EO 2017-06 with an explanatory cover letter, to 357 well drillers and operators possessing a valid license or permit. Notice was also sent to IGWA. Department's letter, dated June 19, 2017 (example attached), invited licensed drillers, operators and interested parties to submit views, opinions or concerns regarding the Department's driller licensing program. The letter included a link to the EO, and afforded letter recipients the opportunity to submit comments to the Department in either written or electronic format by May 1, 2018.

Additionally, the Department published an article in IGWA's summer 2017 quarterly Newsletter, Volume 65, No.1, explaining the EO and opportunities for comments and suggestions.

Department staff also presented the content of the EO and solicited feedback at five well drilling continuing education seminars between November 2017 and May 2018.

The Department received no written or electronic responses to the EO other than the IGWA Letter supporting the well driller licensing program, The Department received four verbal comments for consideration during IGWA workshops held between November 2017 and May 2018. Comments received by the Department regarding changes to rules and or policies include:

- 1) Simplify the current licensing rules from a three-tiered system; Operator I, Operator II and Licensed Driller to a two-tiered system; Trainee and Licensed Driller.

- 2) Provide “on-line” training for continuing education credit requirements pertaining to Idaho Rules. This would alleviate the need of a driller from another state who is licensed in that state and Idaho from having to attend an IGWA workshop just to receive required training and credits on Idaho Rules.
- 3) Develop a separate, specific “driller’s report form” for monitoring wells. A specific monitoring well report form would provide for more detailed reporting of monitoring well data.
- 4) Modify the Well Construction Standards Rules, IDAPA 37.03.09 to allow pump contractors to modify well casings in order to install pitless adaptors or liners in water wells. Currently the Well Construction Standard Rules specify that only licensed drillers can modify the construction of a well, including installation of pitless adaptors and liners.

Comment items 1 and 2 above pertain directly to licensure procedures or processes. Comments 3 and 4 are not directly related to well driller licensing but involve potential changes to well construction standards.

Recommendations

The Department does not find that the elimination of well driller licensing requirements in Idaho is either beneficial or in the public interest. Most or all western states license well drillers in order to protect public health, ground water resources and consumers or well owners. The IGWA and many individual well drillers worked closely with the Department in 2011 on well driller licensing revisions. The current rules are supported by IGWA and the well drillers.

The Department recommends the following actions to address comments received by the Department in response to the EO and upon the Department’s own review of its well driller licensing requirements.

- 1) The Department will work with the IGWA and licensed Drillers and Operators in Idaho to evaluate the two-tiered versus three-tiered licensing system described above. If the regulated community supports changing the licensing system to a two-tiered system, the Department will need to initiate the “negotiated rulemaking” process to formalize the rule change.
- 2) The Department will discuss with IGWA potential opportunities to offer an “on-line” training option to obtain required continuing education credits for Idaho well construction and driller licensing rules.
- 3) The Department will work with IGWA to develop a specific driller report form for monitoring wells.



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

CARY SPACKMAN
Director

June 19, 2017

STANLEY K WOLFE
100 ENDOVA LN
SAINT MARIES ID 83861

RE: Request for Comments Regarding the Idaho Driller Licensing Program

Dear Interested Party:

The Idaho Department of Water Resources (Department) licenses well drillers and operators of water well drilling equipment, pursuant to Title 42, Chapter 2, Section 42-238, Idaho Code. In compliance with Executive Order No. 2017-06 (attached), interested persons are provided the opportunity to submit views, opinions or concerns (written or electronic) regarding the Department's Driller Licensing program. The Executive Order can also be found on-line at:

<https://gov.idaho.gov/mediacenter/execorders/eo17/EO%202017-06.pdf>.

Pursuant to Executive Order No. 2017-06, the Department is notifying, via US mail, each of the drillers and operators currently licensed in Idaho. The Department is also seeking input from the Idaho Ground Water Association (IGWA). The Department will present and discuss the current Driller Licensing Rules and other licensing requirements at the IGWA Annual Conference and Regional Workshops in 2017 and 2018. Comments and concerns about the Driller Licensing Program will be requested at each IGWA event. The Driller Licensing Rules were last revised in 2011.

Submissions to the Department from interested persons regarding the Well Driller Licensing Rules and the licensing process will be accepted through May 1, 2018. Comments can be sent to:

Idaho Department of Water Resources
ATTN: Thomas Neace, P.G., Manager
Ground Water Protection Section
P.O. Box 83720
Boise, Idaho 83720

OR

thomas.neace@idwr.idaho.gov

Sincerely,

A handwritten signature in black ink that reads "Thomas F. Neace".

Thomas F. Neace, P.G.
Manager, Ground Water Protection Section

Enc: Executive Order No. 2017-06



IDWR IMPLEMENTS GOVERNOR'S EXECUTIVE ORDER NO. 2017-06

*Contributed by Thomas Neace, P.G.,
Manager Ground Water Protection Section*

In June 2017 the Idaho Governor's Office issued an executive order regarding professional licenses in Idaho. The Order (EXECUTIVE ORDER NO. 2017-06) concerns the review of all state occupational licenses which includes the licensing of drillers and operators by the Idaho Department of Water Resources. The Executive Order aims to evaluate the licensing process and requirements related to occupational licenses in Idaho. There has not been a comprehensive analysis in Idaho, regarding the effect of existing licensing requirements for various occupations and professions. Many licenses were established to ensure public protection regarding a particular trade or occupation. The Governor's Office has determined that an evaluation of licensing is necessary to ensure that licensing laws and rules do not create unnecessary barriers to commerce and employment.

The Executive Order requires all agencies to review their respective licensing procedures including:

- Timeframe for approving or denying a complete application
- Requirements that are prerequisites for the licensee
- License renewal process
- Statutory or regulatory prohibitions that require the department to deny a license
- Statutory or regulatory authority for the suspension of a license
- Cost of administering the licensing process on a per applicant basis
- Fees charged to applicant for issuance of a license
- Laws and rule changes enacted in the past five years to eliminate barriers.

The Executive Order requires each Department that issues licenses to provide an assessment as to:

- Whether the licensure or requirements are in the public interest
- Provide recommendations for improvement, modification or elimination of licensure requirements
- Adopt a process or procedure affording interested persons reasonable opportunity to submit to the State views, opinions or arguments regarding licensing and the licensing process.

The Department of Water Resources sent a letter to each driller and operator in the State of Idaho on June 19, 2017, regarding the Executive Order and the Idaho Driller Licensing Program. The letter provided a copy of the Executive Order and outlined the process for submitting views, opinions or concerns about the Idaho Driller Licensing Program.

The Department will present and discuss the current Driller Licensing Rules and other licensing requirements at the IGWA annual conference and regional workshops in 2017 and 2018. Comments and concerns about the Idaho Driller Licensing Program will be requested at each event. Submissions to the Department from interested persons regarding the Well Driller Licensing Rules and the licensing process will be accepted through May 1, 2018. Comments can be sent to:

Idaho Department of Water Resources OR thomas.neace@idwr.idaho.gov

ATTN: Thomas Neace, P.G., Manager
Ground Water Protection Section
P.O. Box 83720
Boise, Idaho 83720



Idaho Ground Water Association
PO Box 2624
4477 W Emerald, Ste C-250
Boise, ID 83701
P: (208) 381-0294
E: iwpg.ltominaga@gmail.com

Gary Spackman, Director
Idaho Department of Water Resources
PO BOX 83720
Boise, Idaho 83702
May 31, 2018

RE: Letter of Support to Continue Well Drillers Licensure

Dear Director Spackman:

The Idaho Ground Water Association (IGWA) represents over 225 licensed drillers and operators, well drilling contractors, manufacturer representatives, pump installers, and suppliers who do business in the state of Idaho. The association, established in 1948, supports well drilling licensure.

The well drilling community understands the importance of implementing proper well drilling practices in the field to ensure protection of Idaho's most valuable resource, its water. IGWA recognizes that, with over 90% of Idaho drinking water is sourced from groundwater, this is an important public health and safety issue. IGWA also acknowledges that the use of groundwater contributes significantly to Idaho's economy.

IGWA has reviewed and supports the report and information which is being forwarded to Lt. Governor Brad Little. If you have questions about this letter, please feel free to contact me at 208.890.4014.

Sincerely yours,

A handwritten signature in blue ink, which appears to read 'Lynn Tominaga', is written over a light blue horizontal line.

Lynn Tominaga
Executive Director